

DOCKET NO. 2002-181-C - ORDER NO. 2002-661 ✓*de*

IN RE: Petition of US LEC of South Carolina Inc. for)	ORDER ON PETITION
Arbitration of an Interconnection Agreement)	FOR CLARIFICATION
with Verizon South, Inc.)	AND
)	RECONSIDERATION
)	FILED BY VERIZON
)	SOUTH, INC.

This matter comes before the Public Service Commission of South Carolina on the Petition for Clarification and Reconsideration (“Petition”) filed by Verizon South, Inc. (“Verizon South”). By its Petition, Verizon South seeks clarification and reconsideration of two of the issues addressed by the Commission in its “Order on Arbitration,” Order No. 2002-619, dated August 30, 2002. First, with respect to Issue 3 concerning reciprocal compensation for Voice Information Services Traffic, Verizon South requests that the Commission clarify that nothing in its order requires payment of reciprocal compensation on such traffic to the extent that such traffic is “interstate or intrastate exchange access, information access, or exchange services for such access.” Second, with respect to Issue 5 regarding the use of the phrase “terminating party” or “receiving party” to describe the party receiving the variety of traffic exchanged between the parties, Verizon South submits that the Commission’s decision was inconsistent with its own prior precedents, as well as prior decisions of the Federal Communications Commission (“FCC”), and, accordingly, the Commission should reconsider its position

on Issue 5. US LEC of South Carolina Inc. (“US LEC”) filed a Response to Verizon South’s Petition (“Response”). For the reasons stated below, the Commission denies Verizon South’s Petition.

I. Issue 3 – Is US LEC entitled to reciprocal compensation for terminating “Voice Information Services” traffic?

In Order No. 2002-619, the Commission found US LEC’s position on this issue to be persuasive and found that Verizon South’s position lacked a sound basis in law or fact. Order No. 2002-619 at 8. Further, the Commission found that “there is no legal or factual basis to exclude what Verizon South has defined as ‘Voice Information Services Traffic’ and, as such, the parties shall be required to compensate each other for exchanging and terminating such traffic in accordance with US LEC’s position on this issue.” Order No. 2002-619 at 12.

Verizon South offers by its Petition that the Commission should clarify its decision in Order No. 2002-619 because the Commission stated in Order No. 2002-619 that “to the extent that US LEC provides service to a Voice Information Service Providers who offers ‘recorded voice announcement information,’ that service does not constitute ‘Information Access’ because, by its terms, information access is defined as a service provided ‘by a BOC’.” Order 2002-619 at 10. Verizon South asserts that the Commission’s decision is contrary to the determination of the FCC in its *ISP Remand Order* that CLECs can and do provide information access. Verizon South argues that the FCC in the *ISP Remand Order* stated that “‘information access’ was meant to include all access traffic that was routed by a LEC ‘to or from’ providers of information services.” *ISP Remand Order*, ¶ 44. Thus Verizon South asserts that the Commission should clarify

Order No. 2002-619 to reflect that Voice Information Services Traffic, to the extent it is “interstate or intrastate exchange access, information access, or exchange services for such access,” is not subject to reciprocal compensation under the parties’ agreement. Petition at 3.

By its Response, US LEC asserts that Verizon South’s request for “clarification” would undermine entirely the Commission’s decision in Order No. 2002-619. Response at 1. Further, US LEC asserts that Verizon South raises no new arguments in its Petition, relying instead on the same arguments from the FCC’s *ISP Remand Order* that the Commission considered and rejected previously.” Response at 2.

In considering Verizon South’s request for clarification, the Commission notes that US LEC’s witness Montano stated in her testimony that, unlike intra- or interLATA toll traffic, which is clearly distinguishable, calls to so-called “Voice Information Service Providers” are indistinguishable from all other local traffic. Montano Direct at 12. Thus the only way to separate the traffic is to program switches to “flag” calls to an identified database of providers. Montano Direct at 13. This approach is not only expensive and often inaccurate, because it is not always possible to identify every single number that might be assigned to a Voice Information Service Provider, it is also intrusive because it would force US LEC and every other CLEC to inquire into the proposed business plans of all customers so as to identify those who intend to offer “Voice Information Services.” Montano Direct at 12-13. Additionally, this process would slow the operation of US LEC’s switches significantly because it would force the switch to add additional steps in the process of handling every call. Montano Direct at 13.

The Commission agrees with US LEC that the clarification requested by Verizon South would potentially vitiate the Commission's decision in Order No. 2002-619 with respect to this issue. This Commission reasserts that to the extent that Verizon South's argument against reciprocal compensation for Voice Information Services Traffic is predicated on a faulty reading of the interplay between sections 251(b)(5) and 251(g), we reject it. *See* Order No. 2002-619 at 11-12 for discussion where this issue was addressed by the FCC Wireline Competition Bureau. And as there is no practical way for US LEC to program its switches (not practical, that is, in that the process is expensive, inaccurate, and intrusive for the customers), the Commission declines to adopt the clarification proposed by Verizon South.

II. Issue 5 – Should the term “terminating party” or the term “receiving party” be employed for purposes of traffic measurement and billing over interconnection trunks?

In Order No. 2002-619, this Commission in declining to adopt the term “receiving party” instead of “terminating party” found that Verizon South's proposal to introduce the term “receiving party” for “terminating party” to be without precedent and lacking merit. Order No. 2002-619 at 18. In so finding, the Commission stated that it “can find no compelling reason in Verizon South's position why its attempt to modify decades of industry practice should be accepted” and that “Verizon South has not cited to any authority indicating that its new interpretation has been ordered for use in an interconnection agreement by any regulatory body or tribunal.” Order No. 2002-619 at 17.

By its Petition, Verizon South cites to the record of a Maryland proceeding in which US LEC's attorneys used the term "receive" to refer to traffic that US LEC receives from Verizon. Petition at 3. Further, Verizon South notes that US LEC's technical witness also used the term "receive" to refer to traffic that US LEC receives from Verizon. Petition at 3-4. Thus Verizon South asserts that US LEC's position here in South Carolina in the instant proceeding that use of "receiving party" would modify decades of industry practice is nullified by the references by US LEC to "receiving" traffic, rather than terminating traffic, from the Maryland proceeding. Further, Verizon South asserts that "the Commission's generalization that traffic received by a carrier for delivery to its customers is terminated by the receiving carrier is an oversimplification and inconsistent with this Commission's explicit determination that ISP-bound traffic, for example, is not terminated by the receiving carrier but is delivered to the ISP for onward transmission." Petition at 4

By its Response, US LEC asserts that "the sole basis for Verizon's request for reconsideration of the Commission's decision on Issue 5 is that US LEC's attorneys happened to use the word "receiving" in the context of an arbitration proceeding in another state and that US LEC's witness was confused by inartful questioning from Verizon's counsel." Response at 3. US LEC further asserts that neither reason provides an adequate basis for the Commission to reverse its prior decision from Order No. 2002-619

In Order No. 2002-619, this Commission, in ruling on Issue 5, recognized that traditionally traffic has been referred to as either originating or terminating. Order No.

2002-619 at 15. In declining to adopt Verizon South's position on this issue, the Commission found "no compelling reason in Verizon South's position why its attempt to modify decades of industry practice should be accepted," Order No. 2002-619 at 17. Upon consideration of Verizon South's Petition, the Commission finds that references to "receiving" traffic by US LEC attorneys and witnesses does not invalidate US LEC's position in the instant proceeding. Such minimal usage of the term "receiving" as described by Verizon South does not indicate that the industry has shifted away from the traditional terms of "originating" and "terminating" when discussing exchange of traffic.

Further, this Commission also noted in its "Order on Arbitration" that it had previously ruled that ISP-bound traffic does not terminate at the ISP but continues to the ultimate Internet destination. This Commission also noted that the FCC had also ruled that ISP-bound traffic does not terminate at the ISP's server and that the FCC's determination is under review. Thus the Commission stated that it "agrees with US LEC's position that should the FCC's decision either be changed or reversed on appeal that it is more appropriate for the language in the interconnection agreement to contain terms of normal usage rather than new terms which are not used in the industry and which could give rise to further interpretation and potential litigation." Order No. 2002-619 at 17. The Commission further recognized that an exception to the reciprocal compensation rules applies with respect to traffic bound for enhanced service providers and ISPs, and the Commission concluded that "it is better to leave the exception in place, rather than to redefine the exception by introducing new or novel terms and concepts." Order No. 2002-619 at 18.

Upon consideration of Verizon South's request for reconsideration on this issue, the Commission finds no new argument or compelling reason to grant reconsideration. In Order No. 2002-619, this Commission acknowledged that it, and the FCC, had previously found that traffic destined to ISPs did not terminate at the Internet service provider but continued on to the ultimate Internet destination. However, the Commission also found no compelling reason to change nomenclature to account for that exception. Just as importantly, the Commission recognized that the exception found by the FCC is under review. Should review of the FCC's decision result in reversal of the FCC's decision, the Commission found in Order No. 2002-619 that it is better to have terms of normal usage in the interconnection agreement rather than new terms which could give rise to interpretation and litigation. The Commission finds that the use of "receiving party" by attorneys and a witness in a proceeding in another state does not warrant reconsideration of this issue and does not mean that US LEC's position with regard to this issue was false. Minimal usage of the term "receiving" as described by Verizon South in its Petition does not indicate that the industry has shifted away from the traditional terms of "originating" and "terminating" when discussing exchange of traffic. Therefore, this Commission finds it appropriate to continue to use the phrase "terminating party" in lieu of "receiving party" in the interconnection agreement. However, the Commission makes clear that its decision in no way abrogates the prior decision of this Commission in which this Commission held that ISP-bound traffic does not terminate at the ISP's server but continues to the ultimate Internet destination.

IT IS THEREFORE ORDERED THAT:

1. The Commission denies Verizon South's request for clarification with respect to Issue 3.
2. The Commission denies Verizon South's request for reconsideration with respect to Issue 5.
3. The Parties are directed to implement the Commission's resolution of the issues addressed by this Order and by Order No. 2002-619 by modifying the language of the Interconnection Agreement to the extent necessary to comply with the rulings and framework established by this Order and Order No. 2002-619. The Parties shall file an Interconnection Agreement incorporating the Commission's decisions within sixty (60) days after receipt of this Order.
4. This Order and Order No. 2002-619 are enforceable against US LEC and Verizon South. Verizon South affiliates which are not incumbent local exchange carriers are not bound by this Order or by Order No. 2002-619. Similarly, US LEC affiliates are not bound by this Order or Order No. 2002-619. This Commission cannot enforce contractual terms upon a Verizon South affiliate or US LEC affiliate which is not bound by the 1996 Act.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:


Gary E. Walsh, Executive Director
(SEAL)